

THE DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES

PLAN DOCUMENT
Effective January 1, 2002

City of Lincoln, Nebraska
(Name of Plan Sponsor)

The PLAN consists of the provisions set forth in this document, and is applicable to each PUBLIC EMPLOYEE who elects to participate in the PLAN. The PLAN is effective as to each such PUBLIC EMPLOYEE upon the date he becomes a "PARTICIPANT" by entering into and filing with the ADMINISTRATOR the PARTICIPATION AGREEMENT referred to herein.

ARTICLE I
Definitions

- 1.01. The following terms shall, for purposes of this PLAN, have the meaning set forth below.
- (a) ADMINISTRATOR means the organization selected by the PLAN SPONSOR to administer the PLAN.
 - (b) BENEFICIARY means the person properly designated by a PARTICIPANT to receive the PARTICIPANT'S benefit under this PLAN.
 - (c) COMPENSATION means all payments made by the PLAN SPONSOR as remuneration for services rendered, including salaries, fees, etc.
 - (d) DEFERRED COMPENSATION means the amount of COMPENSATION that a PARTICIPANT elects to defer into the PLAN under the PARTICIPATION AGREEMENT.
 - (e) DEFERRED COMPENSATION ACCOUNT means the separate bookkeeping account maintained by the ADMINISTRATOR within the PLAN for a PARTICIPANT for amounts of COMPENSATION deferred into the PLAN.

- (f) **ELIGIBLE ROLLOVER ACCOUNT** means the separate bookkeeping account maintained by the ADMINISTRATOR within the PLAN for a PARTICIPANT for amounts of ELIGIBLE ROLLOVER DISTRIBUTIONS as defined in Section 1.01(g).
- (g) **ELIGIBLE ROLLOVER DISTRIBUTIONS** means an eligible rollover distribution as defined in IRC Section 402(c)(4), including eligible rollover distributions to a surviving spouse under IRC Section 402(c)(9).
- (h) **ELIGIBLE RETIREMENT PLAN** means an eligible retirement plan as defined in IRC Section 402(c)(8)(B).
- (i) **INCLUDIBLE COMPENSATION** means, for the purposes of the limitations on deferrals, compensation for services performed for the PLAN SPONSOR which is currently includible in gross income after giving effect to all provisions of the IRC. The amount of INCLUDIBLE COMPENSATION shall be determined without regard to any community property laws.
- (j) **INDEPENDENT CONTRACTOR** means any person receiving any type of compensation from the PLAN SPONSOR or any of its agencies, departments, subdivisions or instrumentalities for which services are rendered pursuant to one or more written or oral contracts, if such a person is not an employee.
- (k) **IRC** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended.
- (l) **NORMAL RETIREMENT AGE** means the age specified in writing by the PARTICIPANT. If the PLAN SPONSOR has a PLAN SPONSOR'S Retirement System, the NORMAL RETIREMENT AGE specified by the PARTICIPANT must be an age at which the PARTICIPANT is eligible to retire pursuant to the PLAN SPONSOR'S basic pension plan, by virtue of age, length of service, or both, without consent of the PLAN SPONSOR and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age. If the PLAN SPONSOR has no PLAN SPONSOR'S basic pension plan, the NORMAL RETIREMENT AGE specified by the PARTICIPANT must be at least 60 years. In no event shall NORMAL RETIREMENT AGE be later than age 70½.
- (m) **PARTICIPANT** means any PUBLIC EMPLOYEE who is or has been eligible to defer COMPENSATION under the PLAN and who participates under this PLAN by signing the PARTICIPATION AGREEMENT and who retains rights to benefits under this PLAN.

- (n) PARTICIPATION AGREEMENT means the application to the ADMINISTRATOR to participate in the PLAN.
- (o) PLAN means the Deferred Compensation Plan for Public Employees as set forth in this document and as it may be amended from time to time.
- (p) PLAN SPONSOR means the above referenced city or county or any of its agencies, departments, subdivisions or instrumentalities for which services are performed by a PARTICIPANT.
- (q) PLAN YEAR means the calendar year in which the PLAN becomes effective, and each succeeding calendar year during the existence of this PLAN.
- (r) PUBLIC EMPLOYEE means any person who receives any type of compensation from the PLAN SPONSOR for which services are rendered (including, but not limited to, elected or appointed officials, salaried employees, and INDEPENDENT CONTRACTORS).
- (s) SEVERANCE FROM EMPLOYMENT means the severance of a PARTICIPANT'S employment with the PLAN SPONSOR, as defined by IRC 457(d)(1)(A), or on account of the PARTICIPANT'S death or retirement. An INDEPENDENT CONTRACTOR shall not be considered SEVERED FROM EMPLOYMENT with the PLAN SPONSOR and shall not receive any benefits hereunder unless (i) at least 12 months have expired since the date on which the last contract, pursuant to which the INDEPENDENT CONTRACTOR provided any services to the PLAN SPONSOR, was terminated, and (ii) the INDEPENDENT CONTRACTOR has performed no services for the PLAN SPONSOR, during the 12-month period referred to herein either as an INDEPENDENT CONTRACTOR or employee.
- (t) UNFORESEEABLE EMERGENCY means severe financial hardship to the PARTICIPANT resulting from a sudden and unexpected illness or accident of the PARTICIPANT or dependent (as defined in IRC Section 152(a)) of the PARTICIPANT, loss of the PARTICIPANT'S property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the PARTICIPANT.

1.02. Whenever used herein, the masculine gender shall include the feminine and the singular shall include the plural unless the provisions of the PLAN specifically require a different construction.

ARTICLE II

Election to Defer Compensation

- 2.01.** The PARTICIPANT may elect to participate by agreeing to the PARTICIPATION AGREEMENT and consenting to a reduction of salary by the deferral amount specified in the PARTICIPATION AGREEMENT. The amount of DEFERRED COMPENSATION must equal at least \$20 per month.
- 2.02.** The PLAN SPONSOR shall commence the reduction no earlier than the first pay period commencing during the first month after the date on which the PARTICIPATION AGREEMENT is filed with the ADMINISTRATOR.
- 2.03.** (a) The PARTICIPANT may revoke his election to participate and may amend the amount of DEFERRED COMPENSATION to be deferred by filing with the ADMINISTRATOR a revocation or amendment on a form and in the procedural manner approved by the ADMINISTRATOR. In addition, the PARTICIPANT may amend his investment specification in the procedural manner approved by the ADMINISTRATOR. Any amendment which increases the amount of DEFERRED COMPENSATION for any pay period shall be effective only if an agreement providing for such an additional amount is entered into before the beginning of the month in which the pay period commences. Any revocation or amendment of the DEFERRED COMPENSATION shall be effective prospectively only. Any change in the PARTICIPANT'S investment specification by the PARTICIPANT, whether it applies to amounts previously deferred or amounts to be deferred in the future, shall be effective prospectively only and shall be effective on a date consistent with the rules and specifications of the investment carrier.
- (b) After the death of the PARTICIPANT, his BENEFICIARY shall have the right to amend the PARTICIPANT'S, or the BENEFICIARY'S own, investment specification by filing with the ADMINISTRATOR an amendment on a form and in the procedural manner approved by the ADMINISTRATOR. Any change in an investment specification by a BENEFICIARY shall be effective on a date consistent with the rules and specifications of the investment carrier.

Notice to All PARTICIPANTS to Read These Provisions Providing Deferral Limitations and "Catch-up" Deferrals Under the PLAN.

- 2.04.** Except as provided in Sections 2.05 and 2.06, the maximum deferred amount under the PLAN for the PARTICIPANT'S taxable year shall not exceed the lesser of (a) the maximum dollar amount under IRC Section 457(b)(2)(A) as adjusted for cost of living adjustments described in IRC Section 457(e)(15) or (b) 100% of the PARTICIPANT'S INCLUDIBLE COMPENSATION as provided in IRC Section 457(b)(2)(B).

- 2.05.** The maximum deferral amount described in Section 2.04 under the PLAN for the PARTICIPANT'S taxable year is increased for a PARTICIPANT who has attained age 50 or over by the end of the taxable year. The additional amount permitted under this section is the lesser of (a) the applicable dollar amount set forth in IRC Section 414(v)(2)(B) or (b) the PARTICIPANT'S COMPENSATION for the taxable year reduced by any other elective deferrals of the PARTICIPANT for the taxable year. This Section shall not be applicable for any taxable year in which Section 2.06 applies.
- 2.06.** For one or more of the PARTICIPANT'S last three taxable years ending before the attainment of NORMAL RETIREMENT AGE under the PLAN, the maximum deferral shall be the lesser of (a) twice the applicable dollar amount set forth in IRC Section 457(b)(2)(A); or (b) the limitation established for the taxable year under Section 2.04, plus the limitation established for purposes of Section 2.04 for each of the prior taxable years beginning after December 31, 1978, during which the PARTICIPANT was eligible to participate less the amount of COMPENSATION deferred under the PLAN for each of such prior taxable years.
- 2.07.** Notwithstanding the preceding provisions of Article II, a PARTICIPANT who is entitled to reemployment pursuant to the terms of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) may defer an additional amount under the PLAN as provided in that Act for the years of his or her service in the uniformed services (as defined in USERRA). Any such deferrals will not be subject to the limits set forth above in the year in which deferred, but will be subject to the limits for the year to which such deferrals relate.

ARTICLE III

PLAN SPONSOR Contributions

- 3.01.** The PLAN SPONSOR may contribute to the PLAN for PARTICIPANTS. PLAN SPONSOR contributions shall vest at the time such contributions are made. For purposes of PLANS administering Sections 2.04, 2.05, and 2.06, PLAN SPONSOR contributions shall apply toward the maximum deferral limits in the PLAN YEAR that such contributions are made.

ARTICLE IV

PLAN Transfers and Eligible Distribution Rollovers

- 4.01.** If a PARTICIPANT terminates employment with the PLAN SPONSOR and accepts employment with another employer which maintains an eligible deferred compensation plan (as defined in IRC Section 457) and the new employer's plan accepts transfers, the PARTICIPANT may transfer his account balance from the PLAN to the plan maintained by the new employer.

- 4.02. If the EMPLOYER offers an eligible deferred compensation plan (as defined in IRC Section 457) other than the PLAN, and such other plan accepts transfers, the PARTICIPANT may transfer the account balance from the PLAN to the other plan. The PARTICIPANT'S election to transfer shall be filed with the ADMINISTRATOR.
- 4.03. Transfers from other eligible deferred compensation plans (as defined in IRC Section 457) to the PLAN will be accepted at the PARTICIPANT'S request if such transfers are in cash or non-annuity products currently offered under the PLAN. Any such transferred amount shall not be subject to the limitations of Section 2.04, provided however, that the actual amount deferred during the calendar year under both plans shall be taken into account in calculating the deferral limitation for that year. For purposes of determining the limitation set forth in Section 2.06, years of eligibility to participate in the prior plan and deferrals under that plan shall be taken into account.
- 4.04. The PLAN may receive an ELIGIBLE ROLLOVER DISTRIBUTION on behalf of a PARTICIPANT from an ELIGIBLE RETIREMENT PLAN provided (a) the ELIGIBLE ROLLOVER DISTRIBUTION is made entirely in the form of U.S. dollars, and (b) the PARTICIPANT demonstrates to the ADMINISTRATOR'S satisfaction that the amount is a qualifying eligible rollover distribution under IRC Sections 402(c)(4), 403(a)(4) or 408(d)(3).
- 4.05. Subject to Section 8.01, a PARTICIPANT may elect at the time and in the manner prescribed by the ADMINISTRATOR, to have any portion of an ELIGIBLE ROLLOVER DISTRIBUTION paid directly to an ELIGIBLE RETIREMENT PLAN specified by the PARTICIPANT, provided the PARTICIPANT presents to the satisfaction of the ADMINISTRATOR a letter of acceptance or other written acknowledgment from the accepting plan that is an ELIGIBLE RETIREMENT PLAN qualified to accept the ELIGIBLE ROLLOVER DISTRIBUTION.
- 4.06. A PARTICIPANT may use all or a portion of an account balance as a direct trustee-to-trustee transfer to a Retirement System to purchase permissive service credit or for the repayment of service credits, provided that (a) the Retirement System permits such a transfer, and (b) the PARTICIPANT demonstrates to the ADMINISTRATOR'S satisfaction that the transfer is to a defined benefit governmental plan (as defined in IRC Section 414(d)) and the transfer is permissible for the purchase of service credit (as defined in Code Section 415(n)(3)(A)) or for the repayment of service credits permissible by IRC Section 415(k)(3).

ARTICLE V

Designation of BENEFICIARY

- 5.01 The PARTICIPANT shall have the right to file, with the ADMINISTRATOR, a written BENEFICIARY or change of BENEFICIARY form designating the

person or persons who shall receive the benefits payable under the PLAN in the event of the PARTICIPANT'S death. The form for this purpose shall be provided by the ADMINISTRATOR and will have no effect until it is signed, filed with the ADMINISTRATOR by the PARTICIPANT, and accepted by the ADMINISTRATOR prior to the PARTICIPANT'S death. If the PARTICIPANT dies without having a BENEFICIARY form on file, the benefits will be paid to the PARTICIPANT'S estate.

- 5.02** The PARTICIPANT accepts and acknowledges that he has the burden for executing and filing with the ADMINISTRATOR prior to the PARTICIPANT'S death a proper BENEFICIARY designation form.

ARTICLE VI

Accounts and Reports

- 6.01.** The PLAN SPONSOR shall remit DEFERRED COMPENSATION amounts to the ADMINISTRATOR or its designated agent. The ADMINISTRATOR shall have no duty to determine whether the funds paid to it by the PLAN SPONSOR are correct, nor to collect or enforce such payment. For convenience and to facilitate an orderly administration of the PLAN, the ADMINISTRATOR shall maintain a DEFERRED COMPENSATION ACCOUNT with respect to each PARTICIPANT. A written report of the status of the PARTICIPANT'S DEFERRED COMPENSATION ACCOUNT shall be furnished at least annually to the PARTICIPANT.
- 6.02.** The PARTICIPANT or an ELIGIBLE RETIREMENT PLAN shall remit ELIGIBLE ROLLOVER DISTRIBUTION amounts to the ADMINISTRATOR or his designated agent. The ADMINISTRATOR shall maintain an ELIGIBLE ROLLOVER ACCOUNT with respect to each PARTICIPANT'S ELIGIBLE DISTRIBUTION amounts. A written report of the status of the PARTICIPANT'S ELIGIBLE ROLLOVER ACCOUNT shall be furnished to the PARTICIPANT.
- 6.03.** The ADMINISTRATOR shall file with the PLAN SPONSOR a written report of the assets of the PLAN, a schedule of all receipts and disbursements, and a report of all material transactions of the PLAN during the preceding year at least annually.
- 6.04.** The ADMINISTRATOR'S records shall be open to inspection during normal business hours by the PLAN SPONSOR or its designated representatives.
- 6.05.** All reports to the PARTICIPANT shall be based on fair market value as of the reporting date.

ARTICLE VII

Investment of Deferred Amount

- 7.01. DEFERRED COMPENSATION and ELIGIBLE ROLLOVER DISTRIBUTION amounts shall be delivered by the PLAN SPONSOR to the ADMINISTRATOR or its designated agent for investment as designated by the PLAN SPONSOR.
- 7.02. The PLAN SPONSOR shall use the PARTICIPANT'S or BENEFICIARY'S investment specifications to determine the value of any DEFERRED COMPENSATION ACCOUNT and/or ELIGIBLE ROLLOVER ACCOUNT maintained with respect to the PARTICIPANT as if the deferred amounts had been invested according to such specifications.
- 7.03. All interest, dividends, charges for premiums and administrative expenses, and changes in value due to market fluctuations applicable to each PARTICIPANT'S deferred account shall be credited or debited to the account as they occur.
- 7.04. All assets of the PLAN, including all DEFERRED COMPENSATION and ELIGIBLE ROLLOVER DISTRIBUTION amounts, property and rights purchased with such amounts, and all income attributable to such amounts, property or rights, shall (until made available to the PARTICIPANT or BENEFICIARY) be held in a trust, custodial account or annuity contract described in IRC Section 457(g) for the exclusive benefit of the PARTICIPANTS and their BENEFICIARIES.

Article VIII

Benefits

- 8.01. Commencement of Distributions: Except for UNFORESEEABLE EMERGENCY withdrawals under Section 8.04 and Voluntary In-Service Distribution withdrawals under Section 8.05, distributions from the PLAN may not be made to a PARTICIPANT earlier than (a) the calendar year in which the PARTICIPANT attains age 70 ½ ; or (b) the calendar year in which there is a SEVERANCE FROM EMPLOYMENT by the PARTICIPANT. All irrevocable elections of a Benefit Commencement Date made by PARTICIPANTS or BENEFICIARIES prior to January 1, 2002 and defaulted distributions (other than a defaulted distribution to an annuity option) may be voided at the election of the PARTICIPANT OR BENEFICIARY.
- 8.02. Mode of Payment: Benefits shall be paid in accordance with the payment option elected by the PARTICIPANT. Payment, method of payment, and settlement options are available as provided by each of the available investment specifications. The PARTICIPANT shall elect the mode of payment based upon the options then available. A PARTICIPANT who has chosen a payment option, other than an annuity option, shall have the ability to change his payment option, administrative charge or restrictions may be applicable as determined by the

PLAN SPONSOR and the ADMINISTRATOR. Distributions to a PARTICIPANT must comply with IRC Section 401(a)(9) required minimum distribution rules and must begin no later than April 1 of the year following the calendar year in which the PARTICIPANT attains age 70 ½ or severs employment, whichever is later. If the PARTICIPANT fails to elect a payment option that meets the required minimum distribution rules of IRC Section 401(a)(9), then the ADMINISTRATOR will initiate such a distribution.

8.03. Payments to BENEFICIARY: Distributions to a BENEFICIARY must comply with IRC 401(a)(9). If the PARTICIPANT dies while employed with the PLAN SPONSOR, or if the PARTICIPANT dies before the benefits to which he is entitled under this PLAN have been exhausted, then the benefit payable under this PLAN shall be paid to his designated BENEFICIARY. The BENEFICIARY shall have the right to elect the time and mode of payment of such benefits, subject to the limitations set forth in this PLAN. Such election as to the time of payment (distribution commencement date) shall be filed by the BENEFICIARY not later than ninety (90) days following the PARTICIPANT'S death. Failure to file an election as to the form of payment may result in the ADMINISTRATOR making a lump sum payment to the Beneficiary. After the PARTICIPANT'S death, the PARTICIPANT'S BENEFICIARY may designate a Beneficiary. If the PARTICIPANT'S BENEFICIARY fails to do so before the PARTICIPANT'S BENEFICIARY dies, then the remains is paid to the estate of the PARTICIPANT'S BENEFICIARY.

- (1) If a PARTICIPANT dies on or after the required minimum distribution date, payments shall continue to be paid to the BENEFICIARY at least as rapidly as under the method of distribution in effect at the time of the PARTICIPANT'S death.
- (2) If a PARTICIPANT dies before the required minimum distribution date, payments to a BENEFICIARY must comply with one of the following requirements:
 - (i) The entire account value must be distributed by the end of the calendar year which contains the fifth anniversary of the PARTICIPANT'S death; or
 - (ii) If the BENEFICIARY is a person other than the PARTICIPANT'S spouse, distribution of the account must begin on or before December 31 of the calendar year following the PARTICIPANT'S death, and the entire account must be paid over a period not extending beyond the life expectancy of the BENEFICIARY; or
 - (iii) If the BENEFICIARY is the PARTICIPANT'S surviving spouse, distribution of the account may be delayed until December 31 of the calendar year in which the PARTICIPANT would have attained age 70 ½. The account must then be paid over a period

not extending beyond the life expectancy of the spouse BENEFICIARY.

- (iv) If the BENEFICIARY is not a person, such as a trust or an estate, it must be distributed according to the five-year rule in (i) above.
- (v) If the surviving spouse dies after the PARTICIPANT but before distributions have begun, benefits to the BENEFICIARY of the spouse must be paid according to (i) or (ii) above. The date of death of the spouse shall be substituted for the date of death of the PARTICIPANT.

8.04. UNFORESEEABLE EMERGENCY: Notwithstanding any other provisions herein, in the event of an UNFORESEEABLE EMERGENCY, a PARTICIPANT may request that benefits be paid to him at any time. Such request shall be subject to any limitations specified by the investment carrier. If the application for payment is approved by the PLAN SPONSOR or its designee, payments shall be effected within 45 days of such approval. Benefits to be paid shall be limited strictly to the amount necessary to meet the UNFORESEEABLE EMERGENCY constituting a severe financial hardship to the extent such UNFORESEEABLE EMERGENCY is not relieved:

- (a) through reimbursement or compensation by insurance or otherwise;
- (b) by liquidation of the PARTICIPANT'S assets, to the extent the liquidation of such assets would not itself cause a severe financial hardship; or
- (c) by cessation of deferrals under the PLAN.

Foreseeable personal expenditures normally budgetable, such as a down payment on a home, the purchase of an automobile, college or other educational expenses, etc., will not constitute an UNFORESEEABLE EMERGENCY. The decision of the PLAN SPONSOR or its designee concerning the payment of benefits under this Section shall be final.

8.05. Voluntary In-Service Distribution: A PARTICIPANT who is an active employee of an eligible employer shall receive a distribution of the total amount payable to the PARTICIPANT under the PLAN if the following requirements are met:

- (a) the total amount payable to a PARTICIPANT under the PLAN does not exceed \$5,000 (or the dollar limit under IRC Section 411(a)(11), if greater),
- (b) the PARTICIPANT has not previously received an in-service distribution of the total amount payable to the PARTICIPANT under the PLAN,

- (c) no amount has been deferred under the PLAN with respect to the PARTICIPANT during the two-year period ending on the date of the in-service distribution; and
- (d) the PARTICIPANT elects to receive the distribution.

ARTICLE IX
Administration of PLAN

9.01. The PLAN SPONSOR may at any time amend, modify or terminate the PLAN without the consent of the PARTICIPANT (or any BENEFICIARY thereof), provided, however, that the assets of the PLAN shall be held for the exclusive benefit of PARTICIPANTS and BENEFICIARIES at all times. All amendments shall become effective forty-five (45) days after the issuance of notice of the amendments by the ADMINISTRATOR to the PLAN SPONSOR. No amendments shall deprive the PARTICIPANT of any of the benefits to which he is entitled under this PLAN with respect to deferred amounts credited to his account prior to the effective date of the amendment.

If the PLAN is curtailed, terminated, or the acceptance of additional deferred amounts are suspended permanently, the ADMINISTRATOR shall nonetheless be responsible for the supervision of the payment of benefits resulting from amounts deferred prior to the amendment, modification, or termination in accordance with Article VIII hereof.

- 9.02.** Any companies that may issue any policies, contracts, or other forms of investment media used by the PLAN SPONSOR or specified by the PARTICIPANT, are not parties to this PLAN and such companies shall have no responsibility or accountability to the PARTICIPANT or his BENEFICIARY with regard to the operation of this PLAN.
- 9.03.** Participation in this PLAN by a PUBLIC EMPLOYEE shall not be construed to give a contract of employment to the PARTICIPANT or to alter or amend an existing employment contract of the PARTICIPANT, nor shall participation in this PLAN be construed as affording to the PARTICIPANT any representation or guarantee regarding his continued employment.
- 9.04.** The PLAN SPONSOR and the ADMINISTRATOR do not represent or guarantee that any particular Federal or State income, payroll, personal property, or other tax consequence will occur because of the PARTICIPANT'S participation in this PLAN. The PARTICIPANT should consult with his own representative regarding all questions of Federal and State income, payroll, personal property, or other tax consequences arising from participation in this PLAN.

- 9.05. The ADMINISTRATOR shall have the power to appoint agents to act for and in the administration of this PLAN and to select depositories for the assets of this PLAN.
- 9.06. The laws of the state of the PLAN SPONSOR shall apply in determining the construction and validity of this PLAN.
- 9.07. The rights of the PARTICIPANT under this PLAN shall not be subject to the rights of creditors of the PARTICIPANT or any BENEFICIARY, and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of creditors or other third persons.
- 9.08. Neither the PARTICIPANT nor his BENEFICIARY nor any other designee shall have any right to commute, sell, assign, pledge, encumber, transfer, or otherwise convey the right to receive any payments hereunder which payments and right thereto are expressly declared to be nonassignable and nontransferable.
- 9.09. This PLAN and any properly adopted amendment or modification shall constitute the total agreement or contract between the PLAN SPONSOR and the PARTICIPANT regarding the PLAN. No oral statement regarding the PLAN may be relied upon by the PARTICIPANT.
- 9.10. This PLAN and any properly adopted amendment or modification shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assignees and on all BENEFICIARIES of the PARTICIPANT.
- 9.11. This PLAN, and any properly adopted amendments, shall constitute the total agreement or contract between the PLAN SPONSOR and the PARTICIPANT regarding the PLAN. No oral statement to the contrary regarding the PLAN may be relied upon by the PARTICIPANT.

ARTICLE X

Notice to ALL PARTICIPANTS to Read These Provisions Providing Broad Powers and Absolute Safeguards to the PLAN SPONSOR

- 10.01. The PLAN SPONSOR, the ADMINISTRATOR, or their respective agents shall be authorized to resolve any questions of fact necessary to decide the PARTICIPANT'S right under this PLAN and such decision shall be binding on the PARTICIPANT and any BENEFICIARY thereof, provided, however, that assets of the PLAN shall be held for the exclusive benefit of PARTICIPANTS and BENEFICIARIES at all times.
- 10.02. The PLAN SPONSOR, the ADMINISTRATOR, or their respective agents shall be authorized to construe the PLAN and to resolve any ambiguity in the PLAN.

- 10.03.** The PARTICIPANT specifically agrees not to seek recovery against the PLAN SPONSOR, the ADMINISTRATOR or any other employee, contractee, or agent of the PLAN SPONSOR or ADMINISTRATOR for any loss sustained by the PARTICIPANT or his BENEFICIARY, for the non-performance of their duties, negligence, or any other misconduct of the above named persons except that this paragraph shall not excuse fraud or wrongful taking by any person.
- 10.04.** The PLAN SPONSOR, the ADMINISTRATOR, or their respective agents, if in doubt concerning the correctness of their action in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the identity of the person to receive the payment or allow the filing in any State court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them. The PLAN SPONSOR shall comply with the final orders of the court in any such suit and the PARTICIPANT, for himself and his BENEFICIARY, consents to be bound thereby insofar as it affects the benefits payable under this PLAN or the method or manner of payment.
- 10.05.** The PLAN SPONSOR, the ADMINISTRATOR, and their respective agents are hereby held harmless from all court costs and all claims for the attorney's fees arising from any action brought by the PARTICIPANT or any BENEFICIARY thereof under this PLAN or to enforce his rights under this PLAN, including any amendment, modification or termination hereof.
- 10.06.** The ADMINISTRATOR shall not be required to participate in any litigation concerning the PLAN except upon written demand from the PLAN SPONSOR. The ADMINISTRATOR may compromise, adjust or effect settlement of litigation when specifically instructed to do so by the PLAN SPONSOR.
- 10.07.** Notwithstanding any contrary provision of the PLAN, including any annuity contract issued under the PLAN, in accordance with Section 457(g) of the IRC, all amounts of compensation deferred pursuant to the PLAN, all property and rights purchased with such amounts, and all income attributable to such account, property, or rights shall be held for the exclusive benefit of PARTICIPANTS and BENEFICIARIES under the PLAN and shall be held in a trust, in an annuity contract, as defined in 401(g) of the IRC, or in one or more custodial accounts. For purposes of this paragraph:
- (a) a trust must be established under the PLAN pursuant to a written agreement that constitutes a valid trust under the law of state in which the PLAN SPONSOR is located,
 - (b) an annuity contract shall be issued by an insurance company qualified to do business in the state where the contract was issued and may not include any life, health or accident, property casualty or liability insurance contract, and

- (c) the custodian of any custodial account created pursuant to this PLAN must be a bank, as described in Section 408(n) of the IRC, or a person who meets the non-bank trustee requirements of paragraphs (2)-(6) of Section 1.408-2(e) of the Income Tax Regulations relating to the use of non-bank trustees.

All amounts of compensation deferred under the PLAN shall be transferred to a trust, to an annuity contract described in Section 401(f) of the IRC, or to a custodial account described in Section 401(f) of the IRC, within a period that is not longer than is reasonable for proper administration of the accounts of PARTICIPANTS. To comply with this requirement, all amounts of compensation deferred under the PLAN shall be transferred to such a trust, annuity contract, or custodial account not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee. The ADMINISTRATOR shall be the agent of the PLAN SPONSOR for purposes of providing direction to the trustee, issuer of the annuity contract, or custodian from time to time as to the investment of the funds held for the PARTICIPANTS and beneficiaries in the investment vehicle (trust, custodial account or annuity contract), the transfer of assets to or from the investment vehicle and all other matters. The PLAN SPONSOR agrees to hold all plan assets in a trust, custodial account or annuity contract pursuant to the requirements of the IRC.

ARTICLE XI
Prior Plan

If the PLAN SPONSOR has already accepted the Deferred Compensation Program and adopted an eligible deferred compensation plan, as defined by IRC Section 457, under such Program (the "Prior Plan"), then the PLAN SPONSOR intends that this Plan shall amend and restate the Prior Plan. In such event, this Plan shall apply to all PARTICIPANTS in the Prior Plan on the effective date hereof, and also to each PUBLIC EMPLOYEE who elects to participate in this Plan on and after the effective date hereof.

Article XII
Effective Date

This Plan shall be effective on the date and year written below.

IN WITNESS WHEREOF, the undersigned has executed this Plan this _____

day of _____, _____.

City of Lincoln, Nebraska
(Name of Plan Sponsor)

By: _____

Coleen J. Seng, Mayor
